DOCUMENT RESUME

ED 268 623 EA 018 335

AUTHOR O'Reilly, Robert C.
TITLE Building Administrators, Handicapped Children, and the Courts. Revised.
PUB DATE 23 Jan 86
NOTE 31p.; Paper prepared for the UNO-SDE Seminars for Principals, 1985-86 (Omaha, NE, January 23, 1986).
PUB TYPE Speeches/Conference Papers (150) -- Information Analyses (070) -- Legal/Legislative/Regulatory Materials (090)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Administrator Role; *Court Litigation; *Disabilities; Due Process; Elementary Secondary Education; Family School Relationship; Federal Courts; Federal Legislation; Individualized Education Programs; *Legal Responsibility; *Mainstreaming; Principals; School Districts; School Law; Social Discrimination; Special Education; State Courts; State Legislation; Student Placement; Student Rights; Students; Student Transportation
IDENTIFIERS Education for All Handicapped Children Act

ABSTRACT

This paper reviews federal and state court interpretations of federal and state laws concerning the responsibilities of local school districts in providing free and appropriate education for handicapped children. Particular attention is paid to the building principal's responsibility in carrying out the mandated policies at the operational level, and his or her consequent liability (as a school employee rather than as an officer of the state) for any procedural failings. The cases selected focus on problems at the operational level related to student placement, program reevaluation, discrimination, transportation, misdiagnosis, the length of the school year, and students' needs for unusual assistance. Among the factors considered by the courts in judging these cases are the protection of students' due process rights, the efforts made by school districts to place students in the least restrictive environment possible, and the extent to which schools and school employees are protected from financial liability in cases involving improper placement of students. (PGD)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Robert C. O'Reilly

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED268623

Building Administrators, Handicapped Children, and the Courts

by

Robert C. O'Reilly, Professor
Department of Educational Administration and Supervision

University of Nebraska at Omaha
Omaha, NE 68182

Prepared for
The UNO-SDE Seminars for Principals, 1985-86
Omaha, NE
January 23, 1986

EA 018 335

Revised January, 1986 from a 1985 paper by O'Reilly and Sayler.

Introduction

Public schools are creatures of state legislatures, as those legislatures act under their constitutions, charging the local education agencies (LEAs) to receive and educate all children affected by compulsory attendance statutes. History shows gradual but progressive changes in social attitudes toward the obligation of society to advance the development of handicapped children (See Appendix B). Citing only five cases from the United States Supreme Court, it is clear that the decisions in Pierce (1925)[1], Goss (1975)[2], Tinker (1969)[3], Brown (1954)[4], and Yoder (1972)[5] have had great influence on the operation of public schools. Stretching over five decades, those cases established various new rights for students, due process procedures for students of all kinds.

In the legal mix of Constitutional law, case law, and statutory law, the building principal occupies a unique position. Board members and superintendents are state officers; principals are generally considered as school employees. This means that a principal, engaged in some wrongful act, will probably be unsuccessful in any attempt to shift responsibility for that negligence upward to the superintendent. This is true if the principal's contract is detailed and precise in the delegation of

management tasks, or if it is very broad and general.

Principals are liable for wrongful acts against children if evidence indicates any dereliction of duty. Although principals may be primary targets in damage suits brought when negligence is alleged, in most suits that involve handicapped children, principals are seldom a primary target. They may be in a longer list of defendants in a civil suit, but as such are not primary defendants because the parents/guardians of the handicapped children are characteristically seeking something that a building principal cannot supply, i.e., money damages.

Nonetheless, the central role played by principals in revealing Individualized Education Programs (IEPs) to the parents/guardians of a handicapped child is a tremendously important aspect of the obligation for educating all children. That role comes after identification, consultation, staffing, and planning. When it creates controversy or when it is rejected, the principal's role is raised to a next level of intensity, for reconsideration then becomes a must. Out of the many critical roles that a principal must play, the interface/presentation of an IEP to parents is surely one of the most critical. Whether delegated or done personally, neither procedure diminishes the criticalness of that presentation. Principals must remember that the IEP represents a construct upon which to build the instructional planning---and program---for each identified child.

In most cases that involve disputed placement of handicapped children, it is fair to assume that every principal had a voice before the presentation of that IEP was made and before the

parental objection arose. As the administrator with responsibility for the building, the principal is entitled legally to a voice in every IEP. This doesn't mean that every IEP staffing must include a principal, but it does mean that that could be the case. Placement of children is the principal's responsibility and the IEP must stand examination for educational quality. It is not a matter of filling the student's time.

Now, with those brief and general remarks about the principal's position, role, and obligations, five landmark cases dealing with disputes over the adequacy of education for handicapped children have been selected to further delineate some ways the principals may be involved.

In the case of Mills v. Washington, DC Board 348 F. Supp. 866 (1972), an extensive court order was issued denying that LEA---including every building principal---any right to exclude handicapped children in the classes represented. The court directed the school to provide "to each child of school age a free and suitable publicly-supported education regardless of the degree of the child's mental, physical, or emotional disability or impairment." The order demanded an initiative from the LEA to identify such children. In PARC v. Commonwealth 334 F. Supp. 279 (1972), the court ordered an educational program that gave promise of fullest development to all handicapped children. After reviewing data on mentally retarded children in state institutions, most of whom had no educational program of any kind, the court pronounced that Pennsylvania was liable for any funds needed to hire extra personnel who would be charged to raise the

quality of education for handicapped children. The court also issued a comprehensive order of several parts, including the demand that every person between the ages of 6-21 be given access to an appropriate free public education.

It is worth noting that both of these cases and other similar cases of the latter 1960s-early 1970s preceded pertinent federal legislation in advocacy for handicapped children. The Vocational Rehabilitation Act of 1973 (Section 504) and the Education for All Handicapped Children Act of 1975 followed, as Congress addressed the needs of handicapped children, and identified LEAs as the receiving agencies. Congress determined that it was in the welfare of the nation to develop the potential of the handicapped. So, handicapped children from ages 3-21 are entitled by federal legislation.

Following those signal cases and the legislation of the 1970s came some ambiguous findings. For example, Larry P. v. Riles 495 F. Supp. 926 (1979) came the ruling that tests used for the identification of EMH children had to be set aside in California, labeling them as racially biased when proportionately more blacks than white students were identified through their use. Contrarily, in PASE v. Hanon 506 F. Supp. 831 (1980), Judge Grady heard testimony on the same phenomenon, but then engaged in a thorough analysis of the WISC, WISC-R, and Stanford-Binet tests. He concluded that the California judge had not examined the tests, for he found only nine items of racial bias in all three tests, and ruled that black students in the Chicago Public Schools were not suffering from racial bias as they were identified as EMH.

The point is that LEAs must take the initiative in identifying handicapped children, must not use tests that are racially biased in the identifying process, but must not assume, automatically, a racial bias in that process just because a disproportionate number of minority children may be identified. P.L. 94-142 has a zero-reject feature; public schools must provide for and accept all children with handicaps. Children cannot be excluded because they are difficult to teach, nor because they require special transportation and special programs.

Laws and Types of Problems

Federal and state statutes incorporate all of the procedural due process that is the entitlement of every student, as was enunciated in some detail in Goss v. Lopez 419 U.S. 565 (1975). Additional considerations are due handicapped students as members of one of the eight categories of protected Americans. Building administrators must accept the responsibility to see to it that in all aspects - from identification and reference to appraisal of program effectiveness - due process occurs. That means conformity to the Rehabilitation Act of 1973 (Section 504), the EAHCA of 1975, and the NRS 43-601 to 680. As the local, on-site administrator, it is the principal's obligation to be sure that every handicapped child is educated in the least restrictive environment. The following cases have been selected to show operational problems in student placement, program reevaluation, discrimination, transportation, misdiagnosis, length of instructional year, and unusual assistance.

Student Placement

A number of cases has been selected to illustrate problems in placement. In Adams Central v. Deist 334 N.W. 2d 775 (1983), questions arose about financial responsibility for placement away from home. Early, David Deist was diagnosed as autistic and he initially attended a TMR school in the Hastings Regional Center. As David grew, his behavior became increasingly destructive and disruptive, until in 1977, he was sent home with a note saying that he could not return to the Adams Central School until his behavior improved. Once again placed in the Regional Center, his skills decreased and his parents, in a unilateral decision, placed him in the Nebraska Psychiatric Institute, a fee charging agency. The parents alleged that he had been denied a free appropriate education and sought compensation for all fees from the Adams Central School District.

There were three pertinent questions answered by the Nebraska Supreme Court. First, the court decided that an LEA cannot expel students whose handicaps cause them to be disruptive. Second, the court stated that any LEA, failing to furnish adequate facilities and programs, must accept the financial liability for those services when a parent engages them. Third, the court denied that the LEA had any liability beyond the child's 21st birthday. Administrative delay and bureaucratic confusion has consistently received sharp rebukes from the judiciary. If children are entitled, administrators must act.

In Rowe v. Henry County Board 718 F. 2d 115 (1983), Bobby Rowe

was diagnosed in 1977 as suffering from a learning disability. A place was found in the LEA's self-contained LD center, but the parents placed Bobby in the Martinsville Christian School, 1978-1980, by their own choice. Tested again in 1980, a private school psychologist recommended that Bobby receive maximum remediation. The LEA developed an IEP which the parents rejected, placing Bobby in a residential LD school in another state. They then claimed tuition costs from the LEA. A single question was addressed: Do parents have the right to independently place their child in a private school for the handicapped and recover costs from the school district after arbitrarily rejecting the school's IEP? The court denied their claim, but noted that in some situations, and after appropriate procedures, parents might be allowed such claims when no LEA program is offered for their child.

In Clevenger v. Oak Ridge Board 573 F. Supp. 349 (1983), Richard Clevenger was diagnosed as seriously emotionally disturbed. Periods of absences from the Oak Ridge Schools included times when he was placed in a psychiatric hospital. In 1982 an IEP was developed requiring residential placement and the specific placement was with the Tennessee State Department of Mental Health. The parents rejected the IEP, demanding placement in either of two private schools, one in Texas and the other in Pennsylvania, with the LEA paying for those services. The court decided that placement of an ED child in a state program that provided both academic and psychiatric therapy satisfied the requirements of the EAHCA to provide a free appropriate education, and that the LEA was not obligated to pay for parents' choice.

In a somewhat similar case - Doe v. Anrig 692 F. 2d 800 (1982) - the parents of a Down's Syndrome child with special educational needs were awarded reimbursement who under the EAHCA successfully challenged a proposed IEP. John Doe, the child around whom this case is built, has never lived at home with his parents. He has been raised and educated in a series of residential programs. John's parents paid the costs in full until 1975 when they requested school officials to evaluate John and formulate an IEP. (The EAHCA had recently been enacted.) The Does expected some if not all, of John's schooling costs to be assumed by the school system. An IEP was proposed in 1975 which called for John being placed in a nonresidential public school system after a transitional year of continued residential placement. The IEP was rejected by the Does and a decision was reached - John would remain in residential placement, the Does would assume the cost of residential expense, and the Westwood School District would assume the cost of the day school. In 1977 the Does requested a full reevaluation and a new IEP was proposed. The new plan would place John in a non-residential program for mentally retarded at Walpole Jr. High School and later at Westwood High School. The Does similarly rejected this IEP and sought administrative and judicial review in accordance with state and federal law. Placement, then, is a controversial part of the whole program, open to challenge in several stages.

Courts have intervened on both sides of questions involving reevaluation. In Jackson v. Franklin School Board 765 F. 2d 535 (1985), a seventeen year old sought to enjoin his placement until

an appeal was completed. The student's motion was denied and he was forced to accept a board ruling that temporarily barred him from the school premises. The circuit court agreed and upheld the LEA ruling upon evidence that the student's presence would be disruptive and would contribute to an unsafe school environment. On the other side, in Russell v. Jefferson Schools 609 F. Supp 605 (1985), the IEP for this California schoolchild was received by the court, which then ordered the LEA to modify the IEP. Further, the court noted that if the LEA could not offer an appropriate TMR program, then it should assume the costs of such a program where it could reasonably be found.

A handicapped child was expelled in Prince City Schools v. Maline 762 F. 2d 1210 (1985). Involved in the distribution of drugs, the district court nonetheless held that, under the provisions of EAHCA, the expulsion was unlawful, and that a new staffing was called for to determine if the unacceptable behavior was caused by his handicap. The USCA, 4th, affirmed.

Action was brought challenging California officials' seismic testing of a site for a school for the blind in Students of California School for the Blind v. Honig 736 F. 2d 538 (1984). The California Department of Education decided to move its residential school for the blind from Berkeley to Fremont. Some students sought to block the move and in June 1980 they brought suit in federal court against California educational authorities under EAHCA. The move was challenged on a procedural ground, alleging that the state defendants failed to give proper notice of a change in the students' educational placement. The students also

challenged the move on the substantive grounds that the facilities and community in Fremont were inappropriate for education of the blind. Allegations were that the Fremont site was an earthquake-prone, dangerous area. The school, however, was allowed to open. The U.S. District Court ordered officials to perform additional tests or close the school.

In Town of Burlington v. Department of Education for the Commonwealth of Mass. 736 F. 2d 773 (1984), the parents of a learning disabled child were awarded reimbursement costs - for tuition and related services - during the period of reliance on the state agency decision. The Town of Burlington brought suit against the state and John's parents, seeking to reverse the order of Mass. Bureau of Special Education Appeals which was in favor of private school placement.

John had completed the third grade at a regular public school when his parents appealed to review an IEP. Mediation of disagreements failed and John was placed in a private school. The Bureau held the town's (school's) individualized educational program to be inadequate and inappropriate.

Reevaluation, accounting for the suitability of an IEP, is part of the administrative obligation. In Carroll v. Capalbo 563 F. Supp. 1053 (1983), Michael Carroll was placed in a SPED program in the Coventry (RI) School District, where he resided with his mother. Late in that school year, his mother took him to Bradley Hospital where he was evaluated and placed in a program lasting for about one year. At that time, the Coventry staff, using some of the Bradley findings, developed a new IEP which included his

return to the Coventry Schools. After about one year, the Coventry staff initiated a reevaluation of Michael and his mother agreed to that plan. This comprehensive reevaluation was harmonious with federal and state statutes and regulations. Changing her mind, she revoked her letter of consent for the reappraisal. The LEA informed Mrs. Carroll that it had both the right and obligation to do the reappraisal, and that parental consent was only a courtesy and not material. The court agreed with the school, stating that the LEA could use information from the "outside," that such reevaluations did not infringe on any liberty interest that a parent might have in rearing a child, that reevaluations were not the same as initial evaluations, and that a parent had an obligation to accede to the statutes, when properly applied.

Discrimination

A question of discrimination as basis for a $15 million claim under Section 504 of the Rehabilitation Act of 1973 was raised in Carter v. Orleans Parish Schools 725 F. 2d 261 (1984). The father of six children sued the board of education, claiming that between 1976-78, six of his children were assigned in error to classes for mentally retarded students. Further, he proved that not all were tested and that all were placed without parental consent. Using the federal statute, he sought damages on the premise that all the placements had been acts of discrimination. (Editorial: This kind of pupil management by a building administrator is less than patrons are entitled to.)

The USCA 5th noted that the 1973 Act did provide a personal cause of action not only to persons excluded from federally funded programs because they were handicapped, but also to those who were excluded by way of incorrect classification. It was conceded that all six children, irregularly tested, were misclassified and misassigned. However, there was no indication of discrimination on the board's part, and the board was the named defendant. The court observed that school officials may have been culpable through negligence and/or inadvertence as sources of the errors of placement. If negligent, then the plaintiff might prevail against those officials, but would have to launch another suit to do so.

Transportation

Problems arising in the transportation of children to attend appropriate programs are of more than one type. In Dubois v. Connecticut State Board 727 F. 2d 444 (1984), extensive disciplinary problems in the 1975-76 school year led to Scott Dubois' suspension from Weston Middle School. From 1976 to 1978, Scott attended St. Luke's, a nonspecial education private day school. His disciplinary problems eased, but his academic performance declined and he was not invited to return. In the spring of 1978, Scott's mother and the board sought to arrange new educational placement for Scott for the next school year. The board's Planning and Placement Team recommended placing Scott in the Cooperative Educational Services Alternative Learning Center in Southport; his mother proposed an Arizona school. Psychological testing was suggested to resolve the disagreement

and she was given a list of six psychologists.

She rejected all six, suggesting another who was unknown to the board, and rejected by it. At a hearing it was determined that Scott was not an exceptional child and did not require special education services. Through continued controversy and appeals, the board agreed to fund a placement in a New York school. Later, the Dubois family claimed money costs and damages; $1452 for direct transportation costs to the New York school; $75,000 for the family's mental anguish and loss of income; and $225,000 for punitive damages.

The court ruled that under judicial procedure, if a parent has gone through all required state proceedings and has exhausted administrative remedies, the parent can bring suit for real costs and damages against the board; however, money awards cannot be made until the parent agrees to testing to determine if, really, the child can be classified into one of the handicapped children categories of the EAHCA, and at trial time, such testing had not been done.

Hurry v. Jones 734 F. 2d 879 (1984) was a different kind of claim for transportation costs. George Hurry suffered from cerebral palsy, a degree of mental retardation, and was confined to a wheelchair by spastic quadriplegia. Attending various appropriate educational programs from time to time, he was furnished door-to-door transportation. He grew to 160 pounds, and the bus drivers objected to carrying him up and down the steep concrete steps of his house. His parents assumed the transportation obligation in their own van, but their work

schedules meant that George frequently had long waits in the van, and those long waits caused leg pains for him.

With that condition occurring, George was withdrawn from school and the transportation problem became an item of discussion between the family and the school. A new IEP was developed, providing him with transportation from home to school, and the Hurrys pursued claims for damages. The court awarded damages in three parts, under the EAHCA: $1,150 for the out-of-pocket driving expenses; $4,600 for the contributed services in driving the boy to school; $8,800 for the period of time during which he did not attend school. Under the Rehabilitation Act of 1973, George was awarded $5,000 as compensation for the physical and emotional hardships he endured during the transportation dispute.

In DeLeon v. Susquehanna Community School District 747 F. 2d 149 (1984), the key issue was whether a change in the method of transporting a handicapped child to a special education facility can be considered a change in "educational placement" within the meaning of EAHCA. The "stay put" provision, 20 USC 1415 (e) (3), became a major factor in this case. This provision requires a school district to keep a handicapped child in his current "educational placement" while conducting statutorily mandated due process proceedings concerning changes in the child's educational program.

The case centered on a profoundly retarded boy whose mother transported him to school in her own car and who was paid $75.91 per day for that service. Under the challenged modification, the boy was to be transported with the other children by a driver,

with a ten-minute increase in travel time on the trip home. The boy's parents alleged that this new method of transportation conflicted with his IEP and that the school district violated the "stay put" provision by not conducting a hearing prior to the change. The parents also alleged an adverse effect on the boy's ability to benefit from his education.

In this case the evidence presented did not indicate that the changes in transportation will have a substantial, detrimental impact on the boy's education, nor did it constitute a change in IEP.

Misdiagnosis

In Brosnan v. Livonia Schools 333 N.W. 2d 288 (1983), the action sought damages from the school board, the principal of the school, and the school psychologist. Prior to entering kindergarten in the Livonia Public Schools in September of 1977, Maureen Brosnan was given a speech evaluation test by Thompson, a speech therapist for the Livonia Board. Thompson diagnosed Maureen as having a delayed articulation problem. In kindergarten, Maureen received training and therapy appropriate to the problem, and was treated for nearly two years. Later, it was discovered that she was not suffering from delayed articulation, but rather from language impairment. The Brosnans alleged that the defendants failed to use reasonable care in maintaining diagnostic procedures and failed to properly diagnose Maureen's language problem. The case raised two questions:

1) Is a public school district's administration and supervision of a speech therapy program a government function?
2) Are employees entitled to governmental immunity if said employees act within the scope of their employment when acts of negligence occur?

Answering `Yes' to both questions, the Michigan Appeals Court noted that if a school and its board are engaged in administration of a speech therapy program, they are involved in a governmental function, and thus are entitled to immunity. Since operation of speech therapy programs in public schools is a governmental function, and if employees are acting within the scope of their employment during the period when negligence occurs, they are entitled to governmental immunity. All defendants were exempt claims for damages under Michigan's governmental immunity laws. Most states do not provide such protection.

Length of School Year

The days of instruction to which handicapped children may be entitled has received a unified response from each of the areas where circuit courts have heard the question. In Crawford v. Pittman 708 F. 2d 1028 (1983), six handicapped children and their parents challenged the Mississippi state policy of refusing to consider the possible necessity for educational programs extending beyond 180 days per year. The IEPS prepared for these children did not call for a full year of instruction. The parents contended

that handicapped children regress seriously during the periods when they are without educational programs, and that these children lost during the summer much of what they had learned during the school year. Responding, that court ruled that a state receiving funds under the EAHCA of 1975 cannot refuse, in formulating the IEPs, to consider the possible necessity for programs extending beyond the 180 days per year. A state statute or regulation forbidding consideration of the possible necessity for programs extending beyond 180 days per year violates the EAHCA mandate that an IEP be designed to meet the personal needs of each handicapped child. The design of the Act does not tolerate policies that impose a rigid pattern on the education of children. Each IEP must be prepared on the basis of an individual evaluation of a particular boy or girl. The child and his/her parents or guardians can exact no more, but the state must provide no less.

Unusual Assistance

The most heated controversies in designing education plans for handicapped children have developed from the extent of the handicap, and cost of the remedy, when parents have been unaccepting of offered IEPs. Two cases in point are Rowley v. Hendrick Hudson Board 458 U.S 176 (1983) and Irving Schools v. Tatro 104 S. Ct. 3371 (1984).

Amy Rowley was an eight year old child, deaf from birth and of deaf parents. She was a bright child, performing above the median for her class. Under EAHCA of 1975 (USCA 20S 1401 and other), the officials of the school district prepared an IEP for Amy. Her

parents objected because they noted that the IEP made no provision for a deaf interpreter, sought administrative review (in which the Commissioner of Education for New York rejected their appeal), and brought the case to court. After hearing evidence, the district court pronounced that denial of the interpreter denied a free appropriate education to Amy. Although the IEP provided substantial special education for Amy, the court determined that "only about 59% of what transpired is now accessible to Amy" under her IEP; with an interpreter, that would be expanded to 100%. The question was clear, and upon appeal, the USCA supported the district court, 2-1, saying that Amy was entitled to a deaf interpreter. The USSC reversed, 6-3, declaring that the circuit court focused too narrowly on the one aspect of a whole program; i.e., providing a deaf interpreter. Two other reasons were set forward as the court stated that examination of the statute (PL 94-142, EAHCA) and of substantive cases did not indicate a necessity for such specific support as was contended for the Rowleys; and, that courts lack the specialized knowledge to intrude into specific educational plans, except for protection of children.

The dissent by Circuit Judge Mansfield is lengthy, precise, and instructive. It is a devastating analysis of the reasoning and comments by District Judge Broderick, pointing out his many definitional errors and his ignorance of the federal statute (EAHCA). Although Broderick got two circuit court brothers to support his shoddy scholarship in this case, they made it plain

that their finding applied only to Amy Rowley and was not a generalizable ruling. The USSC rejected that finding, holding for a more comprehensive view of the law, and less specific standards in the design of IEPs.

In 1983, Amber Tatro was seven years old, afflicted with spinal bifida which created speech disorders and a neurogenic bladder. The latter condition called for catheterization several times daily. From the first IEP, in 1979, the school contended that it had no responsibility for the catheterization. At that point, the Tatros commenced appeals seeking an order to compel the school district to provide the Clean Intermittent Catheterization as prescribed by a physician. After three administrative appeals, the Tatros sought the federal courts and the 1983 appeal was the fourth hearing in those courts. The schools offered an at-home program for Amber, but in such an IEP, the school would have no responsibility for CIC. For Amber, three CICs would be required during a normal school day. The USSC received the case on certiorari, addressing two questions: 1) Must the Irving Schools develop an IEP which includes CIC? 2) Must the Irving Schools pay the attorney fees for the Tatros?

Answering those questions `yes' and `no' respectively, the court gave several reasons. The EAHCA does not provide specific exceptions for this type of handicap, and does call for related services, defined as "supportive services as may be required to assist a handicapped child to benefit from special education." A school nurse can perform the draining of urine as specified in Amber's CIC. Without CIC during the day, Amber cannot stay in

school, which would diminish opportunities for mainstreaming, i.e., of placing handicapped children with normal children. It was the intent of Congress that schools would hire various specially trained personnel to assist handicapped pupils. The Tatros did not request equipment, only services. Regarding fees, the Tatros got relief under the EAHCA, and to claim for further relief---lawyer's fees---under the Rehabilitation Act of 1972, § 504, was inapplicable.

Therefore, under the circuit court ruling, and the affirmation by the USSC, it is clear that LEAs have a very broad obligation to accept handicaps at great deviation from the norm, and to provide IEPs that include necessary medical care, producing personnel and money obligations for the schools. Appropriate professional specialists must be hired and appropriate personnel assignments made.

The treatment of special education students, i.e., students who require special assistance in the classroom, whether medical or otherwise, was the subject in the case of Department of Education: State of Hawaii v. Katherine D. 727 F. 2d 809 (1983).

Katherine, born in 1976, suffered from cystic fibrosis and tracheomalacia, causing her windpipes to be floppy instead of rigid. Katherine had worn a tracheostomy tube since 1978, which allowed her to breathe and to expel mucus secretions from her lungs two or three times a day. She was unable to vocalize normally, but received speech therapy and since February 1981 had been able to speak very softly. In the summer of 1980, Katherine

was certified by the Department of Education (DOE) as eligible for special education services under the EAHCA; and Katherine was given an IEP. In October 1980, the administrative hearing officer decided that the DOE's homebound program did not constitute a free appropriate public education because it did not provide placement in the least restricted environment. The hearing officer concluded that Katherine should continue to attend St. Philomena's Child Care Center and that the DOE should pay her tuition. The DOE refused; Katherine counterclaimed for enforcement of hearing officer's order, attorney's fees and costs. The DOE proposed an IEP where Katherine would attend Mauna Loa Elementary School and receive emergency health services. The staff would be trained to dispense Katherine's medication, suction her lungs, and reinsert her tube if it should become dislodged. The staff was reluctant to do this and filed grievances. The District Court ordered the DOE to reimburse Katherine's parents for the cost of enrolling her in a private school and granted attorney's fees. It was concluded by the United States Circuit Court that the DOE did not offer Katherine a free appropriate education; parents were awarded damages; and the state was ordered to pay the cost of private school placement until an appropriate program was devised.

Conclusion and Summary

The involved teachers, under the supervision of building principals who play the key roles in the adaptive educational process that is represented in each IEP, carry out the operational steps. This key role is true for both the mainstreaming and

separating components of each child's plan. The leadership obligation rests upon the principal as the person responsible for pupil placement in the building.

From the federal side, that obligation can be seen in Section 504, which says in part:

> No otherwise qualified handicapped individual in the United States...shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

State statutes have reiterated that obligation. In those statutes, the topics of education for handicapped children are treated extensively, with many specific details covered and terms defined. For example, educational programs for preschool children may be described, options identified, and the allocations for costs made specific.

Although the programmatic responsibilities are, in this grouping of statutes and cases, clearly the obligation of each school system, it is equally clear that building administrators are operationally responsible. They are on site. Principals must facilitate identification, create any conditions necessary for a staffing, and signal their endorsement of the IEPs. Most essential in the entire operation for every building principal is to control special education programs to the extent that adequate due process be made available to each child and parent. That is a critical legal minimum for every principal.

Addendum

An addendum, slightly apart from the information presented on cases and statutes, seems necessary, and it also casts the problems and opportunities in special education controversies in a broader mode. Press releases from the Department of Education have revealed a new set of guidelines, in formation in 1985, for reporting on special education programs. State departments of education will be asked to gather new kinds of data, and more precisely, than in the past. That is, the regulations of the DE, having the force of law, are being modified, and a new information reporting system is central to the modifications. Building principals. as the on-site operating administrators, will be responsible for new comprehensiveness and precision, and must be alert to the new data collecting requirements as a basic legal obligation about programs on special education.

In Burlington School Committee v. Department of Education 53 USLW 3243 (1983), the Supreme Court unanimously affirmed the position taken by the USCA First Circuit (736 F. 2d 773, 1984) in regard to tuition costs in private schools. The parents of Michael Panico rejected the IEP of the LEA, enrolling him in a private school for the learning disabled at their own expense. The order was for the LEA to pay tuition and transportation costs because the unilateral parent decision provided a placement that was deemed proper by the court. Such a routine involved parental

financial risk, for if courts determined that the LEA placement was inappropriate, parents could not obtain reimbursement, an aspect made quite clear by Justice Rhenquist who wrote the opinion.

The high court ruled against parents in Austin v. Brown School District 53 USLW 3692 (1985), a case where regression of learning was alleged as a consequence of an improper IEP. Amy Austin's parents sought monetary damages under Section 504 of the 1973 Rehabilitation Act or Section 1983 of the U.S. Code. A large part of the argument was that attorney's fees could not be demanded from the LEA, but the Court let stand the interpretation that the EAHCA, PL 94-142, is the sole avenue to redress questions of inappropriate placement in free public education, and at the same time does not allow for recovery of attorney's fees or damages. The court relied on Smith v. Cumberland Schools 703 F. 2d 4 (1983), in which attorney fees of $32,109 were denied, for this ruling.

It is apparent that disagreement over placement, costs, and other aspects of special education will continue to come to the attention of courts in this decade as parties seek final settlement of these disagreements.

References

1. Pierce v.Society of Sisters 268 U.S. 510
2. Goss v. Lopez 419 U.S. 565
3. Tinker v. Des Moines Schools 393 U.S. 502
4. Brown v. Topeka Board 347 U.S. 483
5. Wisconsin v. Yoder 406 U.S. 205

Specific Cases

Mills v. Washington, DC, Board 348 F. Supp. 866
PARC v. Commonwealth 334 F. Supp. 279
Larry P. v. Riles 495 F. Supp. 926
PASE v. Hanon 506 F. Supp. 831
Adams Central v. Deist 334 N.W. 2d 775
Rowe v. Henry County Board 718 F. 2d 115
Clevenger v. Oak Ridge Board 573 F. Supp. 349
Doe v. Anrig 692 F. 2d 800
Burlington v. Commonwealth of Massachusetts 736 F. 2d 773
School for the Blind v. Honig 736 F. 2d 538
Jackson v. Franklin School Board 765 F. 2d 535
Russell v. Jefferson Schools 609 F. Supp. 605
Prince City Schools v. Maline 762 F. 2d 1210
Carroll v. Capalbo 563 F. Supp. 1053
Carter v. Orleans Parish Schools 725 F. 2d 261
Dubois v. Connecticut State Board 727 F. 2d 444
Hurry v. Jones 734 F. 2d 879
DeLeon v. Susquehanna Schools 747 F. 2d 149
Brosnan v. Livonia Schools 333 N.W. 2d 288
Crawford v. Pittman 708 F. 2d 1028
Rowley v. Hendrick Hudson Board 458 U.S. 176
Irving Schools v. Tatro 104 S. Ct. 3371
State of Hawaii v. Katherine D. 727 F. 2d 809

RCO:UNO
1986

Appendix A
Summary
Handicapped Children in Schools: Administrators and the Courts

Topic 1, Placement

Can parents exercise independent choices about educational programs when an appropriate IEP is designed by the LEA? No.

Topic 2, Reevaluation

Can parents deny an LEA the opportunity to reevaluate handicapped persons, to determine the effectiveness of an IEP and possibly new placement? No.

Topic 3, Discrimination

When students are mislabeled and misassigned into classes for handicapped children, is this a sign of discrimination on the part of the board? No.

Topic 4, Transportation

Must a school district provide transportation for very severely handicapped, but otherwise qualified children, as part of their educational plan? No, but must be prepared to reimburse such costs, if it is not provided.

Topic 5, Misdiagnosis

Can a board of education and its agents be held liable for misdiagnosis and misassignments? Yes, except in states such as Michigan, which still provides governmental immunity.

Topic 6, Length of School Year

Can a state arbitrarily set some specific number of days in the school year, not to be exceeded in any SPED program and any IEP? No.

Are handicapped students entitled to due process procedures within the school's organization? Yes.

RCO:UNO
1986

Appendix B
*Education for the Handicapped Revealed in History and Dates

1950s Special classes received materials and textbooks similar to the regular classrooms.

Classes were isolated from other classes, often in another building.

Special education training in colleges and universities was very limited if at all existent.

1960s Assessments resulted in a diagnostic label. Funding was attached to these labels and the expectations regarding the potential of students was sometimes unrealistic.

Test results were used to exclude children who did not meet requirements for special services.

1970s Legislation required appraisals to be done by a team of professionals and that multiple measures be used. The appraisal must be administered in the student's primary language. The product of the appraisal must be an educational plan.

Grouping by handicapping condition was changed to grouping by instructional need.

All handicapped students were declared eligible for public education. The legal entry age was lowered to three and extended to twenty-one by federal statute.

Services to learning disabled children were introduced. Determining the degree of severity necessary was left to the states.

Public Law 94-142 added the complexity of documentation requirements and systems to monitor procedural safeguards.

Thousands of handicapped students were discharged from institutions and placed in the communities. The profoundly handicapped entered public school settings causing public school personnel to become adjusted to a new array of medical and physical requirements.

1980s The decade of the eighties has seen a struggle between public and private agencies serving handicapped children and their families. Public school systems have been required to be responsible for services formerly provided by special institutions. This zero reject feature of the current legislation requires school districts to serve children too dangerous to be served by some public agencies.

The debate about the learning disabled, i.e., Who are they? How many are there? What do they have in common? It is difficult to identify precisely and reliably those students who should be served in special programs for the learning disabled.

Currently, efforts 1) to develop interagency linkages, 2) to minimize duplication of services and, 3) to prepare for the transition from school to communities are being undertaken.

-- -- --

1817 The American Asylum for the Education of the Deaf and Dumb was opened in Hartford, Connecticut (now the American School for the Deaf). Other states quickly followed. "Asylum" in the original name meant that such persons were removed from society and placed in sanctuaries where they could be better cared for. This was the "out of sight, out of mind" phenomenon.

circa 1830 Private residential schools for the blind were established in Boston and Watertown, Massachusetts, and in New York and Philadelphia. Public residential schools for the blind were opened by most states shortly after these first private schools.

1840 Rhode Island enacted the first compulsory school attendance law. Similar legislation in other states led to the establishment of special classes in public schools and special day schools.

1876 The Association of Medical Officers of American Institutions of Idiotic and Feebleminded Persons (now the American Association on Mental Deficiency) was founded at a meeting at the Pennsylvania Training School in Media, Pennsylvania.

circa 1900 First special public school class for physically handicapped children in the United States was established in Chicago.

1916 First standardized American version of the Binet-Simon tests was published as the Stanford Revision of the Binet Scale (now knows as the Stanford-Binet Intelligence Scale).

1925 First of five volumes Genetic Studies of Genius was published by Lewis Terman, chief architect of the Stanford-Binet Intelligence Scale. (Last volume of this series was published in 1959).

1958 Public Law 85-276 (National Defense Education Act) provided grants to colleges, universities, and state agencies for the education of teachers for the mentally retarded.

1961 Public Law 87-276 (Special Education Act) provided funds for training professionals to train teachers for the deaf.

1963 Public Law 88-264 (Mentally Retarded Facility and Community Center Construction Act) authorized teacher training appropriations for "mentally retarded, hard of hearing, deaf, speech impaired, visually handicapped, seriously emotionally disturbed, crippled, or other health impaired children who by reason thereof require special education."

1966 Public Law 89-750 (Amendments to the Elementary and Secondary Education Act) created the Bureau of Education for the Handicapped within the U.S. Office of Education.

1973 Public Law 93-112 (Section 504 of the Rehabilitation Act of 1973) required architectural accessibility to public schools; forbid discrimination against the physically handicapped.

1975 Public Law 94-142 (The Education for All Handicapped Children Act) ensured free public education for all children between the ages of 3 and 21, regardless of physical or mental handicap.

1983 Public Law 98-199 (Amendments to the Education of the Handicapped Act) extended the research, developmental, and personnel training needs of EAHCA, and provided a new method to assure handicapped private school students receive a fair share of federal aid.

*Adapted from Leo Mahoney, 1985